IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6856 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW ODHAV GRAM PANCHAYAT - Petitioner(s)

Versus

PRAVINBHAI I MEHTA & 2 - Respondent(s)

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Appearance :

MR PRABHAKAR UPADYAY for Petitioner(s) : 1,
MS SHUBHRA ALMOULA for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 28/12/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 10th January 2001 passed by the Labour Court, Ahmedabad in Recovery Application Nos.489/96 and 490/96, whereby the petitioner was directed to pay Rs.16865.49 to Shri

Pravinchandra I. Mehta and Rs.11,017.68 to Dharmisthaben Varia along with interest at the rate of 12%.

2. The respondent nos.1 and 2 were working as daily rated clerks with the petitioner. Their services came to be terminated by following due procedure as contemplated under the Industrial Disputes Act by order dated 28th May 1996. The respondents, therefore, raised disputes which were referred to LabourCourt and registered as Reference (LCA) no.1100/96 and Reference (LCA) No.1102/96. The Labour Court allowed those references by award dated 2.2.2000.

3. The petitioner challenged those awards by way of filing Special Civil Application Nos.9738/200 and 9741/2000. However, the matter was settled between the parties and the awards were modified accordingly in respect of back wages. Thereafter the respondents were reinstated in service by the petitioner Panchayat.

4. Thereafter the respondents lodged claims in April 1996 under section 33[C](2) of the Act being Recovery Application Nos.489/96 and 490/96 claiming overtime wages, unprivileged leave and bonus. The Labour Court

allowed those applications as stated hereinabove which are challenged in the present petition.

5. Learned counsel for the petitioner submitted that the respondents were working as daily wagers and therefore they are not entitled to any benefits as per the norms of Government Employees. He submitted that the respondents are not the employees of the Panchayat and they are not working on permanent posts. They were not regularly selected and they are not entitled to any benefits such as bonus, etc. He submitted that the matter had already been settled before this Hon’ble Court and therefore the Labour Court has no jurisdiction to entertain the claim of the respondents.

6. Learned counsel for the respondents submitted that the respondents are entitled to bonus, overtime, leave salary, etc. and as the same were not granted earlier the respondents have approached the Labour Court and the Labour Court has rightly allowed the applications. She therefore submitted that this Court may not interfere with the award in question.

7. As a result of hearing and perusal of the record, it is evident that in the earlier reference the respondents

had not raised the issues in question. Even while settling the matter before this Court, they have never claimed any overtime, bonus, etc. It is also an established fact that they were not working on permanent post. I am of the view that before filing the application under section 33[c][2] of the Act, the rights of the parties are required to be ascertained. Unless the claims are established and ascertained, no order can be passed under the provisions of section 33[C][2] of the Act. In the present case no such rights are ascertained. I am therefore of the opinion that the Labour Court has committed an error in allowing the applications under section 33[C][2] of the Act.

8. In the premises aforesaid the petition is allowed. The impugned award dated 10.1.2001 passed by the Labour Court, Ahmedabad, in Recovery Application No.489/96 and 490/96 are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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